UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/54
15 January 2002

ENGLISH
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Globalization and its impact on the full enjoyment of human rights

Report of the High Commissioner for Human Rights submitted in accordance with Commission on Human Rights resolution 2001/32

GE.02-10108 (E) 210202

CONTENTS

	Paragraphs	Page
Introduction	1 - 8	3
I. HUMAN RIGHTS, GLOBALIZATION AND AGRICULTURE	9 - 17	5
A. The international and social order	9 - 10	5
B. Agricultural trade, the right to food and the right to development	11 - 17	6
II. THE AGREEMENT ON AGRICULTURE	18 - 31	8
A. The Agreement	19 - 26	8
B. Implementation of the Agreement	27 - 31	11
III. HUMAN RIGHTS, THE AGREEMENT ON AGRICULTURE AND THE LIBERALIZATION OF AGRICULTURAL TRADE	32 - 43	12
A. Issues arising from the liberalization of agricultural trade	32 - 39	12
B. Developing human rights approaches to the AoA	40 - 43	15
IV. CONCLUSIONS AND RECOMMENDATIONS	44 - 54	17
Annex		25

Introduction

1. In its resolution 2001/32, the Commission requested the High Commissioner for Human Rights, in cooperation with the United Nations Conference on Trade and Development (UNCTAD), to submit a comprehensive report entitled "Globalization and its impact on the full enjoyment of human rights" for consideration by the Commission, taking into account the provisions of the resolution. The High Commissioner submits the present report in response to the resolution.

2. The report has been drafted in the framework of the preliminary report of the Secretary-General on globalization and its impact on the full enjoyment of all human rights (A/55/342). In that report, the Secretary-General noted that "[w]hile there have been previous eras that have experienced globalization, the present era has certain distinctive features, including, although not limited to, advances in new technology, in particular information and communications technology, cheaper and quicker transport, trade liberalization, the increase in financial flows and the growth in the size and power of corporations" (para. 5). The Secretary-General noted that "[t]he norms and standards of international human rights law have an important role in providing principles for globalization" (para. 8). In order to focus the report in a way that allows meaningful analysis, the High Commissioner has chosen to examine the human rights dimensions of one of these processes in particular, namely trade liberalization. The focus on trade liberalization is based on a perceived need to continue filling a gap in information on human rights and globalization. While work is already being done by the various human rights mechanisms on structural adjustment programmes - including three reports of the Special Rapporteur on structural adjustment programmes - as well as information technology - in particular racism on the Internet in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance - little attention so far has been focused on trade liberalization.

3. The specific aspect of trade chosen is the liberalization of agricultural trade. The High Commissioner has chosen this for a number of reasons. Importantly, in keeping with the resolution, the focus on agricultural trade provides a helpful bridge between the High Commissioner's mandate and that of UNCTAD. UNCTAD has recognized the important link between trade in agriculture and food security and development. According to the tenth session of the United Nations Conference on Trade and Development (UNCTAD X) UNCTAD is mandated to identify, on the basis of research and empirical evidence and with development impact assessment, the implications of existing and emerging multilateral trade rules for the development prospects of developing countries, in particular on "ways and means to improve market access for their agricultural products", on "domestic support, including in the context of their efforts to increase productivity and food security" as well as on "export subsidies and other kinds of export support".[1] The Programme of Action adopted at the Third United Nations Conference on Least Developed Countries held in Brussels in May 2001 noted that agriculture is the pivotal sector in LDCs that underpins food security, foreign exchange earnings, industrial and rural development, and employment generation. The LDC Conference encouraged continuing the process of trade liberalization to expand the sources of food supply. In this context, the Programme of Action calls for coherent actions by the United Nations and other organizations as an essential element in policy reform directed to transforming trade into a powerful engine for growth and poverty eradication in LDCs.[2]

4. The High Commissioner has also chosen trade in agriculture as the focus of the report due to her specific mandates in relation to the right to food and the right to development. The Plan of Action adopted at the World Food Summit invites the High Commissioner, in cooperation with other organizations and bodies including United Nations organizations and relevant intergovernmental mechanisms, to define better the right to food and to propose ways to implement and realize the right to food as a means of achieving the commitments and objectives of the Summit.[3] General Assembly resolution 48/141 establishing the mandate of the High Commissioner specifically sets out her responsibility "to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose" (para. 4 (c)). Given the links between agricultural trade and development and food security, the High Commissioner believes that an examination of the liberalization of agricultural trade will be a further step in fulfilling her mandate.

5. The High Commissioner also views the present report as a means of contributing to the work of the Sub-Commission on the Promotion and Protection of Human Rights on the human rights dimensions of World Trade Organization (WTO) trade agreements. The WTO agreements cover three areas: trade in goods, trade in services and intellectual property. The High Commissioner has already submitted one report concerning the WTO Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) on the enjoyment of human rights (E/CN.4/Sub.2/2001/13). The Sub-Commission in its resolution 2001/4, adopted at its last session, has also begun considering the human rights implications of the WTO General Agreement on Trade in Services (GATS), expressing concern "about the impact of liberalization of trade in agricultural products upon the promotion and protection of the right to food for members of vulnerable communities".

6. The High Commissioner believes that a focus on the liberalization of agricultural trade will also build upon work of the special mechanisms and treaty bodies of the human rights system. The international human rights machinery is increasingly looking at the link between international trade rules and the right to food and the right to development. The independent expert on the right to development has recently linked the implementation of the right to development to trade and macroeconomic issues concerning access to food and food security. In his third report to the open-ended Working Group on the Right to Development (E/CN.4/2001/WG.18/2, para. 12), the independent expert referred to the standards of the general comment on the right to food adopted by the Committee on Economic, Social and Cultural Rights and noted that the right to development implies looking at the provision of food as a part of a country's overall development programme, bringing in fiscal, trade and monetary policies and the issues of macroeconomic balance. In his report to the General Assembly (A/56/210) in 2002, the Special Rapporteur on the right to food also underlined that free trade does not automatically feed the hungry.

7. The report has been drafted in cooperation with UNCTAD, as well as other relevant international organizations. In response to the resolution, the High Commissioner wrote to the Secretary-General of UNCTAD on 22 June 2001 as a first step in the process of consultation. Subsequently, the Office held consultations with UNCTAD, and UNCTAD reviewed the report prior to submission. The report has also drawn material from reports of other international

organizations, in particular the WTO, the Food and Agriculture Organization of the United Nations (FAO) and the Organization for Economic Cooperation for Development (OECD), and the Office held consultations with some of these organizations.

8. Rather than make an impact assessment, the purpose of the report is to outline the main issues arising when the liberalization of agricultural trade is viewed from a human rights perspective. The report begins by outlining the norms and principles of human rights that are most relevant to the negotiation and implementation of the Agreement on Agriculture (AoA). The report notes that the member States of the WTO hold concurrent responsibilities to promote and protect human rights as well as to implement trade rules and that the norms and standards of human rights provide a legal framework to protect the social dimensions of globalization. The report then gives a brief introduction to the main features of the AoA - market access, domestic support, export competition, special and differential treatment for developing countries and the ongoing reform process. The report identifies some of the issues that have arisen in the implementation of the AoA as well as some of the general impacts of the liberalization of agricultural trade - whether as a result of the implementation of trade rules, or due to macroeconomic reforms. Finally, the report identifies areas where further clarification or elaboration is needed.

I. HUMAN RIGHTS, GLOBALIZATION AND AGRICULTURE

A. The international and social order

9. In his report to the General Assembly (A/55/342), the Secretary-General identified the basis for adopting a human rights approach to globalization in article 28 of the Universal Declaration of Human Rights, which states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". There the Secretary-General stated that "such an international and social order is one that promotes the inherent dignity of the human person, respects the right of people to self-determination and seeks social progress through participatory development and by promoting equality and non-discrimination in a peaceful, interdependent and accountable world" (para. 7). Achieving fair and equitable trade liberalization by adopting human rights approaches to WTO rules will be an important step in establishing a just international and social order and a failure to do so could perpetuate or even exacerbate existing inequalities. As the Committee on Economic, Social and Cultural Rights (CESCR) concluded in its recent statement on poverty (E/C.12/2001/10), the absence of an equitable multilateral trade, investment and financial system - amongst other factors - is a global structural obstacle to poverty reduction (para. 21).

10. The High Commissioner has already noted the need for human rights approaches to WTO rules (see E/CN.4/Sub.2/2001/13, para. 60). Of the 144[4] members of the WTO, all have ratified at least one human rights instrument. All but one have ratified the Convention on the Rights of the Child, 112 have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and all have adopted the Universal Declaration of Human Rights. WTO members should therefore bear in mind their concurrent obligations to promote and protect human rights when negotiating and implementing international rules on trade liberalization, recognizing the declaration made at the World Conference on Human Rights in Vienna that human rights are "the first responsibility of Governments".[5] A human rights approach seeks to provide the ground

for implementing these concurrent obligations coherently. Moreover, a human rights approach provides balance to the liberalization of trade. While the WTO agreements provide a legal framework for the economic aspects of the liberalization of trade, the norms and standards of human rights balance this by offering a legal framework for the social dimensions of trade liberalization.

B. Agricultural trade, the right to food and the right to development

11. Given the important role that agriculture plays for food security and development in many countries, the design and implementation of WTO rules concerning agriculture could affect the enjoyment of human rights, in particular the right to food and the right to development, and also the right to health, the right to social security, as well as the rights of particular groups such as children, indigenous peoples or migrants. The following section sets out the content and obligations concerning the right to food and the right to development relevant to the development of the agricultural sector and to the negotiation and implementation of WTO rules on agricultural trade.

12. The Committee on Economic, Social and Cultural Rights has elaborated upon the content of the right to food in its general comment No. 12 (E/C.12/1999/5). According to the Committee, the right to food is realized when everyone has physical and economic access at all times to adequate food or means for its procurement (para. 6). The core content of the right implies:

(a) *The availability of food* in a quantity and quality sufficient to satisfy the dietary needs of individuals free from adverse substances. Availability refers to the possibility of feeding oneself directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems that can provide more food from the site of production to where it is needed (paras. 8 and 12);

(b) *The accessibility of food* in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Accessibility implies both economic and physical accessibility. Economic accessibility implies that financial costs related to food are not so excessive as to threaten the purchase of other basic needs. Physical accessibility implies that adequate food must be available to everyone and all groups (paras. 8 and 13).

13. States have obligations to protect, respect and fulfil the right to food at the national and international levels. At the national level, States have responsibilities to establish strategies to promote and protect the right to food. Strategies will differ from State to State but should comply with human rights principles such as accountability, transparency and people's participation (paras. 21 ff). Special measures should be taken to guarantee the right to food of vulnerable populations and individuals (para. 28).

14. At the international level, the Committee considers that States carry responsibilities, including in the following areas (paras. 36 ff):

(a) To respect the right to food in other countries;

(b) To facilitate access to food and to provide the necessary food aid where required - this includes providing food aid in ways that do not adversely affect local producers and markets. Further, food aid should be organized in such a way as to return self-reliance to the beneficiaries;

(c) To ensure that in international agreements the right to food is given adequate consideration.

15. The Committee has also set out the acts that constitute a violation of the right to food. These include (para. 19):

(a) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food;

(b) The failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others;

(c) The failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.

16. States have also undertaken obligations to promote and protect the right to development according to the Declaration on the Right to Development. Two aspects of the right are particularly relevant to the liberalization of agricultural trade:

(a) First, the right to development places the human being at the centre of development. Article 1 of the Declaration states that the right is an "inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights can be fully realized";

(b) Second, the right implies the duty of States to formulate appropriate national development policies aimed at the realization of the right to development for the well-being of the entire population.

17. There are many possible courses of action that the State can take to promote the right to food and the right to development. In relation to the right to food, these will often take place at the local and even household level. However, it can be assumed that States will use all legislative, economic, social and political means necessary to achieve the full realization of these rights, including market-based mechanisms. Indeed, the ICESCR specifically identifies the need to ensure that international trade promotes the right to food. Article 11 (2) states that "[t]he States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed, taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need".

II. THE AGREEMENT ON AGRICULTURE

18. Given the need to promote the right to development and the right to food through local agricultural production and by insulating domestic markets from international price volatility, the liberalization of agricultural trade was treated differently from other sectors in the original General Agreement on Tariffs and Trade (GATT) and significant degrees of protectionism were allowed to persist. However, prior to the Uruguay Round, agricultural trade was in "disarray" and high levels of domestic support, large-scale use of export subsidies by some developed countries, and unstable world prices characterized the sector.[6] This situation encouraged States to include comprehensive multilateral rules for the liberalization of agricultural trade on the agenda of the Uruguay Round. After a difficult negotiation process, States concluded the Agreement on Agriculture, which is one of the agreements annexed to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and is thus an integral part of the WTO Agreement. The AoA came into force in 1995. The Committee on Agriculture oversees the implementation of the AoA and generally meets four times a year.

A. The Agreement

19. Although not specifically referred to in the substance of the AoA, the objectives of the Agreement can be drawn from the preamble which recalls the long-term objective of the reform process "to establish a fair and market-oriented agricultural trading system" and "to provide for substantial progressive reductions in agricultural support and protection". To this end, the AoA comprises commitments to reduce support to and protection of the agricultural sector under the three headings of market access, export subsidies and domestic support. The rules and commitments undertaken by members of the WTO under each of these headings can affect the agricultural sector in a variety of ways and as a result can have an impact on States' ability to guarantee the right to food and the right to development.

20. *Market access.* The removal of obstacles to accessing markets opens trade opportunities and should increase trade. Tariffs and so called "non-tariff barriers to trade" are two important sets of obstacles to market access. Tariffs are taxes levied on imported goods and are simple forms of trade policy instruments that provide a source of government revenue. Non-tariff barriers take a different form, for example a quota restriction on imports. Both tariff and non-tariff barriers provide protection for domestic sectors - in this case, agriculture - from international competition by artificially increasing the domestic price of imported goods. Raising tariffs and protecting against import surges are means by which the State can protect local production and so promote the right to development of local producers, although at the same time, consumers have to cope with higher food prices. The removal of tariffs can open large markets to outside producers which, in the longer term, could let producers in developing countries have greater access to the benefits offered by trade liberalization. The effects of removing tariffs will be different from country to country. The AoA introduced rules that capped and reduced tariff levels and banned agricultural non-tariff barriers to trade,[7] introduced minimum market access opportunities[8] and provided a special safeguard mechanism to protect against import surges (see annex).

21. *Export competition.* Export subsides are seen by many as one of the most trade-distorting measures. They tend to increase the market share of the subsidized exporter and lower world market prices of the product concerned. Further, export subsidies are not necessarily stable as they can change from year to year so they can also result in greater fluctuations in world food supply and prices. For countries that are net food-exporters, but that have limited resources to provide subsidies, export subsidies in other countries can impede local production by increasing the volume of products on the world market and lowering their price. For net-food-importing countries, there might be benefits in the short term due to lower prices of imports from a subsidizing export country. However, the instability of export subsidies means the supply of cheaper products is unpredictable and so makes these countries vulnerable to price increases when the subsidies are lifted. Similarly, the lower international prices might have negative effects on local production in these countries by flooding local markets with cheaper products that local producers cannot compete with.[9] These various impacts of export subsidies could impact on local producers and even consumers' enjoyment of their right to development. Similarly, the uncertainty of export subsidies could affect the availability and accessibility of food, and ultimately the enjoyment of the right to food in certain cases.

22. Under the AoA, WTO members specify for each year the maximum quantity of products subject to export subsidies and the maximum level of outlay for these subsidies and undertake to reduce the level of subsidies calculated according to a base period of 1986-1990.[10] Members have also undertaken not to provide any new subsidies. This implies that countries that have not specified the maximum levels of export subsidies cannot introduce export subsidies in the future. Given that generally only certain wealthy countries have the capacity to subsidize exports, the reduction and eventual elimination of export subsidies will be an important step in achieving a just international and social order as envisaged under article 28 of the Universal Declaration.

23. *Domestic support.* Prior to the Uruguay Round, agricultural support for local producers - "domestic support" - was excessive, particularly in developed countries, and was leading to mounting surpluses and stockpiles of certain products. This was having a distorting effect on trade - for example by increasing the volume of products on the market and lowering their price. Consequently, the AoA included measures to reduce domestic agricultural support. The provisions introduced the means to reduce domestic support while at the same time giving Governments some room to develop agricultural policies responsive to national needs. The AoA divides domestic support into essentially two categories: those subsidies that members have to reduce, and those they do not have to reduce. Measures that do not have to be reduced fall within a number of subcategories, namely "green box" measures, "blue box" measures, development measures and *de minimis* levels of support. Measures that have to be reduced are included in the "amber box" (see annex). In supporting producers, domestic support has the potential to promote agricultural development - and consequently the right to development of producers - although this is generally at the cost of tax-paying consumers. However, when domestic support is concentrated in wealthy countries and is so large that it becomes trade distorting and anti-competitive for poorer producers and traders, this raises questions concerning the compatibility of domestic support with a just international and social order conducive to the promotion and protection of human rights.

24. *Special and differential treatment.* The Agreement includes special and differential treatment for developing countries.[11] In other words, it takes into account the special problems that developing countries might face in the implementation of the AoA, by providing that developing and least developed countries enjoy longer implementation periods and lower reduction rates in implementing commitments on market access, export subsidies and domestic support. Developing countries may also continue providing support for some development measures and may grant marketing cost subsidies and internal transport subsidies in certain cases.[12] Further, while recognizing the potential benefits for all countries from the agricultural "reform process" in the WTO, States recognized that least developed and net-food-importing countries might experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions. Specifically, States accepted that liberalization could increase world market prices - in particular through the lowering of export subsidies - which could affect the availability for these countries of basic foodstuffs on reasonable terms.

25. Consequently, WTO members adopted a Ministerial Decision (the Marrakesh Decision) addressing these matters as part of the Uruguay results (the WTO Agreement).[13] The Decision provides for four separate response mechanisms concerning food aid, agricultural export credits, the establishment of a financing facility to finance commercial imports, and an agreement to provide technical and financial assistance to improve agricultural productivity and infrastructure (see annex). Special and differential treatment for developing countries is a significant element in trade rules from a human rights perspective. Special and differential treatment recognizes that different countries face particular problems when liberalizing their agricultural sectors, which is the first step in accepting the need for affirmative action in trade liberalization. Thus, special and differential treatment could provide a potential means of operationalizing the international cooperation commitments under the ICESCR and the Declaration on the Right to Development.

26. *Built-in agenda.* Finally, the AoA includes, under article 20, a built-in agenda for continuing negotiations on the agricultural reform process from 2000. Proposals for negotiations have come from most of the WTO membership. The proposals have demonstrated many and diverse positions and concerns, reflecting the fact that the agricultural sector has widely varying significance from country to country. In November 2001, ministers of WTO members met in Doha, Qatar, and adopted a declaration that included agreements concerning future negotiations on agriculture. Ministers committed themselves, without prejudging the outcome of the negotiations, to comprehensive negotiations aimed at "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support".[14] Importantly, ministers also agreed that special and differential treatment for developing countries would be an integral part of all elements of the ongoing negotiations including, as appropriate, in rules and disciplines so that the treatment is operationally effective and enables developing countries to take effectively into account their development needs, including food security and rural development. The ongoing reform process therefore offers an opportunity to review and improve trade rules with a view to ensuring the flexibility necessary for States to liberalize agricultural trade, while at the same time respect, protect and fulfil human rights, in particular the right to food and the right to development.

B. Implementation of the Agreement

27. Possibly the most positive achievement of the AoA has been to subject international agricultural trade to a rules-based and more transparent system. This in itself is an important first step in effectively addressing the barriers to and distortions in trade in the areas of market access, domestic support and export subsidies, beginning the process towards a more fair international trading system. However, beyond this, an OECD study indicates that "the empirical evidence suggests that the overall effects [of the AoA] have been moderate". Further, according to the FAO and UNCTAD, the implementation of the Marrakesh Decision has been "unsatisfactory".[15] Issues arise in relation to the implementation of the AoA itself, as well as issues concerning the Marrakesh Decision.

28. *Issues of balance and fairness*. The OECD study concluded that agricultural tariffs on some products are still high, with prohibitively high tariffs on some products that are considered "sensitive" to developing countries,[16] and, further, that trade-distorting domestic support remains highly skewed with over 90 per cent concentration in developed countries.[17] In particular, the OECD study notes that over 60 per cent of domestic agricultural support in OECD countries is excluded from reduction commitments under the AoA, in spite of the fact that many exempt support measures - while admittedly less trade distorting than traditional forms of domestic support - still have production and trade effects.[18] The OECD study notes that the export subsidy commitments have been the most effectively implemented although it also notes that few countries had to change their policies substantially, as the implementation period coincided with a rise in world grain prices - thus reducing the need to provide incentives to export.[19] In contrast to many OECD countries, the agricultural sectors in LDCs and net-food-importing developing countries cannot benefit from the same flexibility as in some OECD countries. For these countries, the agricultural sector had already been substantially liberalized prior to the adoption of the AoA due to macroeconomic reforms led by World Bank and International Monetary Fund structural adjustment programmes. For many of these countries, the agricultural sectors are in fact more liberalized than is required under their AoA commitments.[20] Further, while some OECD countries continue high levels of domestic support - even in accordance with the AoA - LDCs and many net-food-importing developing countries simply do not have the finance to do so. Another issue relating to fairness is the question of acceding countries. FAO has observed that developing countries negotiating accession to the WTO are facing tough negotiations, in particular on domestic support, and many have not managed to ensure special and differential treatment in the commitments they have undertaken.[21]

29. *Availability and effectiveness of targeted food aid*. While, in accordance with the Marrakesh Decision, States concluded a new Food Aid Convention, there are still general problems with food aid which could have negative impacts on the enjoyment of the right to food and work against the effective implementation of the Marrakesh Decision. The World Food Programme (WFP) has stated that it is critical that food aid reaches targeted populations if the spirit of the Marrakesh Decision and the needs of the reform process are to be met during the reform process.[22] Yet, WFP has highlighted the fact that only half of global food aid during the 1990s was actually targeted to those who needed it, with WFP itself being responsible for delivering about two thirds of that targeted aid. Further, food aid can be erratic as it tends to be measured in monetary terms rather than in tonnage. In this way, when prices are high, food aid is low, and when prices are low, food aid is high. This was the case for a major food aid supplier

which doubled its food aid from 1997 to 1998.[23] This counter-cyclical nature of food aid - responding to prices rather than need - runs against the interests of beneficiary countries. In particular, the presence of high levels of food aid when food prices are low can have negative effects on the livelihoods of local producers who cannot compete.[24] On the other hand, lower levels of food aid when prices are high can aggravate food insecurity in recipient countries. As noted by the CESCR, in accordance with the right to food, States have a responsibility to provide food aid in ways that do not adversely affect local producers and markets (E/C.12/1999/5, paras. 36 ff);

30. *Financing for agricultural development.* Under the Marrakesh Decision, ministers agreed to give full consideration to requests for the provision of technical and financial assistance to improve agricultural productivity and infrastructure in LDCs and net-food-importing countries. The FAO has indicated the importance of directing more resources towards agricultural development if the 2015 target of halving the number of the food insecure is to be met.[25] For this, FAO underlines the need for political will by both national Governments and international foreign donors. At the national level, the level of public expenditure in agriculture is lower in the category of countries with the highest prevalence of undernourishment. At the same time, internationally, official development assistance (ODA) from both bilateral and multilateral donors in the agricultural sector has stagnated during the 1990s and private foreign direct investment has generally bypassed most poor countries, with relatively little investment going to agricultural development. For example, the shortfall between a "business as usual" investment scenario and one in which the 2015 target will be met in sub-Saharan Africa is 38 per cent.[26] To improve financing for agricultural development, it is important that food-insecure countries identify the problems they are facing in promoting the right to food in the context of globalization as, under the Marrakesh Decision, financial assistance is given on the basis of requests from recipient countries. However, the WTO has indicated that it has no information on whether least-developed and net-food-importing developing countries have made requests pursuant to the Marrakesh Decision.

31. Nonetheless, the process of reform of agricultural trade in the WTO must be viewed as an ongoing, dynamic process that, while possibly not a perfect system, has subjected trade to a more transparent, rules-based system. On this basis, the OECD study suggests that there is a need for further reform based on an appropriate role for Governments to address policy goals that are targeted, transparent, cost-effective and avoid distortion of production and trade.[27] Such ongoing reform will be important also in establishing a truly non-discriminatory, participatory and transparent international trading system that provides an enabling environment for the enjoyment of human rights.

III. HUMAN RIGHTS, THE AGREEMENT ON AGRICULTURE AND THE LIBERALIZATION OF AGRICULTURAL TRADE

A. Issues arising from the liberalization of agricultural trade

32. Establishing a human rights approach to the AoA will depend on identifying the real and potential impacts of trade rules on the enjoyment of human rights. However, it is difficult to isolate the effects of the AoA on human rights from the effects of trade liberalization generally - for example, as a result of macroeconomic reform - and even from the effects of the many other

factors that influence the agricultural sector. Changing weather patterns, population growth, financial crises, food safety regulations, ongoing structural adjustment reform, changing patterns of food aid and ODA, national development policies, not to mention the different relationship of each country to the market, influence the agricultural sector as do the implementation of trade rules. Trade liberalization will also affect countries differently, depending on whether a country is a net-food-importing country, a food-exporting country, a small or large developed country, an LDC, a small island State and so on. Further, the AoA will affect the human rights of people within a country differently; for example, a small farmer, a farm labourer, an urban dweller, or an industrial production firm will often be affected quite differently.

33. In a general sense, the establishment of a rules-based trading system and the opening of markets can help guarantee the enjoyment of human rights by improving opportunities for development, economic growth, job creation, and the diffusion of technology and capital. Increased levels of trade in agriculture can contribute to the enjoyment of the right to food by augmenting domestic supplies of food to meet consumption needs and by optimizing the use of world resources. Similarly, on account of the AoA, international trade in agriculture is now subject to rules, which promotes transparency and accountability - important prerequisites for the enjoyment of human rights.[28] A recent WTO study has noted that "trade liberalization is generally a positive contributor to poverty alleviation - it allows people to exploit their productive potential, assists economic growth, curtails arbitrary policy interventions and helps to insulate against shocks".[29]

34. However, the WTO study also recognizes that trade liberalization will create losers even in the long run and that trade reforms could exacerbate poverty temporarily. Human rights law concerns itself in particular with the situation of the individuals and groups who might suffer during the reform process. Indeed, this is one of the key issues concerning globalization and human rights. Even where the net social benefit from trade liberalization favours the majority in a certain country, the principle of non-discrimination under human rights law requires immediate action to protect the human rights of those who do not benefit. In the case of the AoA, this means that States should use existing flexibilities in the Agreement where they exist, and WTO members should consider improving or adding flexibilities where appropriate. The rest of this section sets out the principal issues raised in the context of open and opening markets generally - not limited to only the effects of the AoA.

35. *Resource-poor farmers and farm labourers*. The protection of the rights of individuals and groups is the focus of human rights approaches to trade liberalization. FAO studies on the impact of the AoA on 14 developing countries have noted possible negative impacts of liberalization on certain individuals and groups. The studies indicated that there has been a general trend towards the consolidation of farms as competitive pressures build up following trade liberalization. However, while this has contributed to an increase in productivity and competitiveness, it has also led to the displacement and marginalization of farm labourers. This has created hardship for small farmers and food-insecure populations, in situations where there are few safety nets.[30] For example, in Sri Lanka, tariff reductions and the associated increase in food imports have put pressure on the rural sector, including employment. The FAO study cited the case of 300,000 people involved in the production and marketing of onions and potatoes

who were adversely affected by tariff reductions. The study notes that the possibility of diversification away from these crops was limited.[31] The case study of India underlines the importance of using existing flexibilities within the AoA. The FAO study demonstrates that while agricultural trade liberalization is likely to impact negatively on the rural and urban poor by exposing small farmers to import competition and raising the level of food prices, the appropriate response was identified as safety net measures such as employment programmes, targeted food supplies and a programme of food price stabilization, all of which would be in conformity with the AoA.[32]

36. *Local food production.* There could be right to food implications where trade liberalization affects the availability, accessibility or sustainability of food supplies. For example, the FAO country studies raise the issue of the fate of local products in smaller countries and their ability to compete with those of larger producers. As one example, the study of Guyana noted that increasing imports of fruit juices from larger producers have displaced much domestic production and underlined a growing dependency in Guyana on imported foods. The fear was expressed in Guyana that without adequate market protection, coupled with appropriate development programmes, many domestic products would be displaced or local production undermined, leading to transformations in local diets and a growing dependency on imported foods.[33]

37. *Balance of payments.* Balance of payment problems - if long-term and unsustainable - could affect negatively a State's ability to promote the right to development. For some developing countries, there has been a trend towards import growth outstripping growth in exports. The FAO country studies show that for 11 of the 14 countries studied, the total value of food imports grew more rapidly than the value of exports in 1995-1998 in comparison with 1990-1994 - a negative outcome for those countries. A more comprehensive WTO study notes growing negative trade balances in agricultural products in 59 out of 107 non-OECD countries.[34] The reasons behind such an outcome are complex and might not be a concern where, for example, relative increases in food imports are balanced with export increases in other areas such as industrial products.[35] However the figures underline the asymmetry for some countries between the capacity to attract imports after opening markets and the capacity to increase exports - the latter requiring considerably more planning and finance. Net-food-importing countries that are single commodity exporters face particular problems in this regard, significantly, when faced with the erosion of trade preferences that could result from trade liberalization.

38. *Vulnerability to price fluctuations.* Again, in some cases, vulnerability to price fluctuations as a result of trade liberalization could expose some States to the external vagaries of markets that could have a negative impact on their ability to finance development, or even to guarantee the availability of food in some cases.[36] Perhaps the most notable case of price fluctuations was the increase in world cereal prices from 1995 to 1997 and their subsequent decrease in 1998. According to the FAO, the price increases in cereals led to a 49 per cent rise in the cereal import bills of LDCs and net-food-importing developing countries.[37] However, there is also evidence suggesting that many developing countries were able to offset the increases in world prices through lowering tariffs and substituting cereal imports with

lower-quality cereal imports, and noting that the price increases and their consequences were less serious than the cereal price increases of the 1970s - prior to liberalization.[38] Perhaps the most significant observation is that vulnerability to the effects of international price changes will vary according to the size of the country and its dependency on imports. From a human rights perspective, it will be important that trade rules guarantee flexibility to take remedial action to ensure that price fluctuations do not negatively affect the availability or accessibility of food.

39. *Preferential treatment for developing countries*. Many LDCs and net-food-importing countries continue to enjoy preferential treatment for their exports under various multilateral schemes, such as the Cotonou Partnership Agreement between the European Union and the African, Caribbean and Pacific group or the Caribbean Basin Initiative of the United States. Such schemes hold the potential to provide important market access opportunities for these countries. However, discussions during consultations for the drafting of this report raised the issue of preferential trade agreements leading to discrimination among developing countries, for example where certain LDCs and net-food-importing countries are not party to such agreements.

B. Developing human rights approaches to the AoA

40. The negotiation and implementation of WTO rules concerning agriculture is only one issue relevant to agricultural development and the promotion and protection of the right to food and the right to development. Agricultural development depends on many factors including the presence of solid transport systems, the availability of up-to-date farming technology, the maintenance of plant diversity, the availability of credit facilities, the level of rural education, the existence of appropriate national development planning, political stability, good national governance and so on. WTO trade rules are only one piece of the puzzle. However, trade rules that leave developing countries, especially food-insecure countries, the flexibility to develop the agricultural sector in appropriate ways and that promote effective and operational forms of international cooperation while at the same time achieving real reductions in the worst forms of trade-distorting measures will assist countries to meet their obligations to respect, protect and fulfil human rights.[39] The ongoing reform process in the WTO offers the opportunity to achieve this.

41. At the heart of adopting a human rights approach to the liberalization of agricultural trade is the issue of whether a "one-system-fits-all approach" is appropriate. The agricultural sector plays starkly different roles in the development of every country. In the case of low-income countries, the agricultural sector plays an essential role in ensuring food security and alleviating poverty. In these countries, it is still the major employer, it is a significant contributor to GDP as well as an important source of foreign exchange and revenue. Further, food consumption accounts for a significant share of expenditure for households in many developing countries. As the FAO has stressed, "[f]rom a historical perspective, very few countries have been able to successfully transform their economy into a developed one without first developing their agriculture".[40] For developed countries, the agricultural sector is often less significant as an employer and contributor to GDP, and food consumption accounts for a relatively small and decreasing share of household income. The application of the same rules to widely different populations and conditions without effective affirmative action for the poor risks exacerbating existing inequalities. In this context, the High Commissioner endorses the opening statement of the Secretary-General of UNCTAD at UNCTAD X when he stated that:

> "Some still insist that the problem will be better dealt with by bringing about a level playing field, by just eliminating price-distorting mechanisms, by creating equal opportunity for all. Is it really serious to pretend that equal opportunities will suffice when people and countries start from astronomically distant starting points? How truly equal is equal in this case? Should we not recognize that the game of competition requires, as all games do, not only clear rules and impartial arbiters but training [and] preparation, as well? Is this not what countries that have long-deprived and underprivileged minorities do with 'affirmative action' programmes aimed not at some hypothetical equality but at the actual equality of providing the needy, that is, the unequal, with specific, differentiated opportunities to learn how to compete, how to produce, how to trade?"

42. Part of the difficulties with the AoA spring from the fact that the framers of the Agreement sought to correct the situation of mounting production surpluses in a number of food products from developed countries, through rising domestic support and the use of export subsidies. This did not - and does not - necessarily correspond to the needs of other countries. Food-insecure developing countries in particular need to deal with inadequate production and lack of resources to raise agricultural productivity and food production in line with their needs and potential. The opening of markets in a manner that is conducive to the protection of human rights in fact requires a different form and pace, depending on the country in question. This requires an approach to trade rules that guarantees affirmative action for vulnerable individuals and groups. Without doing so, trade rules, including the AoA, risk creating a level playing field of unequal players. A human rights approach would consider the impact of trade liberalization not only on the need to minimize trade distortions, but also on different groups, in particular vulnerable people and groups, and set rules accordingly. In spite of the inclusion of several special and differential measures for developing countries, the AoA does not yet sufficiently take into account the highly varying levels of development of the agricultural sectors between countries and of the people whose livelihood depends on agriculture.[41]

43. Applying the human rights principle of non-discrimination to trade law encourages affirmative action for the poor. While non-discrimination is also a principle of international trade law there is a distinction in the application of the principle. "National treatment" envisages equal treatment for nationals and non-nationals - whether they are poor farmers or large agrobusiness or industrial firms. Treating unequals as equals is problematic for the promotion and protection of human rights and could result in the institutionalization of discrimination against the poor and marginalized. Under human rights law, the principle of non-discrimination does not envisage according equal treatment to everyone in all cases.[42] Affirmative action is necessary in some cases to protect vulnerable people and groups. While special and differential treatment under trade law is a positive step, the High Commissioner encourages the introduction of measures that go beyond longer transition times and "best endeavour" commitments and calls for targeted and enforceable treatment. In this context, the High Commissioner welcomes the commitment in the Doha Ministerial Declaration to make special and differential treatment an integral part of the rules and disciplines of the AoA so as to be operationally effective and to enable developing countries the flexibility to take into account food security and rural development objectives.

IV. CONCLUSIONS AND RECOMMENDATIONS

44. The High Commissioner recalls that, according to the Declaration on the Right to Development, States have a duty to formulate appropriate national development polices that aim at the constant improvement of the well-being of the entire population. In particular, the High Commissioner emphasizes that, as recognized by the FAO, provided domestic policies are in place to spread around the gains and to compensate the losers, then trade liberalization can play an important role in improving access to food.[43] While promotion of the right to food requires action primarily at the local and household levels, a balanced liberalization of agricultural trade that seeks affirmative action for the poor and vulnerable according to human rights principles and that leaves the appropriate flexibility to States to promote human rights in development is also important. The High Commissioner offers the following broad areas for action as possible ways to achieve a human rights approach to trade liberalization.

45. *Giving adequate consideration to human rights in trade rules.* The High Commissioner recalls the opinion of the CESCR that States have a responsibility "to ensure that in international agreements that the right to food is given adequate consideration". The High Commissioner notes that the norms and standards of human rights provide the legal framework for the protection of the social dimensions of trade liberalization as a complement to trade rules. In the context of the ongoing reform process under article 20 of the AoA, the High Commissioner encourages greater consideration to developing a legal framework for the social dimensions of the liberalization of agricultural trade through express reference in the AoA to the promotion and protection of human rights.

46. *Human rights impact studies.* States, in implementing and reviewing trade rules, are encouraged to consider the most appropriate mechanisms that on the one hand promote agricultural development, food security and the alleviation of poverty and on the other hand, are minimally trade distorting. The High Commissioner highlights the observation that an assessment of the impact of the AoA can only be made at the country level.[44] The High Commissioner encourages States to consider more closely the positive and negative impacts of agricultural trade liberalization on human rights - in particular the right to food and the right to development - and to raise the question of such studies in the Committee on Agriculture as part of the ongoing review of the AoA as mandated under article 20.

47. *Special and differential treatment targeted at vulnerable people and groups.* The AoA currently does not make a distinction between different types of agriculture - such as commercial agriculture or subsistence agriculture - and different players - from low-income and resource-poor farmers on the one hand, to national and international agrobusiness on the other. The High Commissioner draws attention to the fact that the right to development places the human person at the centre of development. A human rights approach to trade liberalization therefore focuses on protecting vulnerable individuals and groups - in particular, low-income and resource-poor farmers, as well as farm labourers and rural communities. In many cases, given that the majority of poor people are in developing countries, this could require special provisions for developing countries. However, any measures should be targeted so that special treatment is awarded to vulnerable people, but not to wealthy farmers or agrobusiness in poor countries. Leaving greater flexibility for developing countries to raise tariffs and grant domestic support can have positive effects for the enjoyment of human rights by resource-poor farmers and rural

populations while at the same time have relatively minor trade-distorting effects, given the relatively small impact of LDCs and net-food-importing countries on international trade. The High Commissioner also emphasizes that greater flexibility in liberalization commitments should be matched at the national level with strong emphasis on implementing poverty alleviation strategies that improve access by the poor to productive assets, land, technology and employment.

48. *Special and differential treatment that promotes food security.* There is solid evidence to suggest that measures targeted towards crops essential to ensure food security, as opposed to other food crops, is important in promoting the right to food. FAO has noted that "[d]evelopment experience over the last 50 years has amply demonstrated that vast rural poverty and food insecurity in developing countries had largely been the result of development strategies that overlooked the importance of the development of the agricultural sector, particularly the production of staple foods" - a good reason not to overlook them in international rules that affect domestic support.[45] Food-security crops are often cultivated for local consumption more than for export, which means that special measures targeted at such crops should improve food security at the national level, while remaining minimally trade distorting in world markets. Possible action could include allowing food-insecure States to enjoy a higher *de minimus* limit for trade-distorting domestic support for basic foodstuffs compared to non-food crops or non-food-security crops.[46]

49. *Operationalizing special and differential treatment for developing countries.* Both UNCTAD and FAO have recognized that one of the reasons for the "unsatisfactory" implementation of the Marrakesh Decision was the absence of adequate enforcement measures. The High Commissioner welcomes the Doha Ministerial Declaration and encourages the WTO member States to consider the possibilities of introducing operational mechanisms to support the implementation of the Decision. Operational mechanisms should include the allocation of rights and responsibilities to relevant actors; the creation of a centralized monitoring and enforcement mechanism with the duty to report annually on assistance given and received; a mechanism for reporting on national experiences that includes technical assistance for countries unable to monitor national experiences; the setting of realizable objectives for financial and technical assistance within specified time frames; and the development of human rights benchmarks and indicators.

50. *More targeted financing for development.* The High Commissioner underlines the importance of international cooperation to promote and protect human rights. In particular, the High Commissioner notes that, while increased flexibilities in trade rules will give many countries the space to implement policies to promote the right to food and the right to development, many countries lack adequate finance to do so. Thus, for example, while tariff measures might be revenue raising, domestic support requires finance and many countries might not be in the position to make adequate use of such flexibility. In this regard, the High Commissioner reiterates her call for developed countries to implement the commitment, made at the twenty-fourth special session of the General Assembly convened in 2000 in follow-up to the World Summit for Social Development, to meet the target of providing at least 0.7 per cent of GNP as official development assistance.[47]

51. *More targeted food aid.* The High Commissioner reminds States of article 11 of the International Covenant on Economic, Social and Cultural Rights which calls for international cooperation to ensure the distribution of world food supplies in relation to need, taking into account the problems of food-importing and food-exporting countries. The High Commissioner recognizes that international food aid at times responds to world food prices and can even be used as disguised export subsidies, and so emphasizes the importance of food aid being targeted and responsive to needs. To this end, the High Commissioner supports targeted food aid programmes such as food-for-work programmes.

52. *Fair trade liberalization.* The High Commissioner emphasizes the need for a just social and international order in the field of trade liberalization that seeks fair trade. The ambiguities existing in the AoA have allowed some OECD countries to over-estimate bound tariffs, set peak tariffs on "sensitive" goods and continue high levels of domestic support. Fair international trade rules should seek transparent rules that encourage implementation of the spirit, not only the letter of the AoA. Further, while the preamble to the AoA includes the objective of improving market access to developing countries, greater consideration could be given to elaborating the means for doing so. The High Commissioner therefore encourages the removal of structural imbalances in the AoA that favour wealthier countries over others. The High Commissioner also encourages more concerted efforts on behalf of OECD countries to reduce and remove distortions to trade - in particular export subsidies - given the inability of most other countries to offer similar protection for their populations. In this context, the High Commissioner welcomes the commitment in the Doha Ministerial Declaration to substantial improvements in market access and reductions of all forms of export subsidies with a view to phasing them out, and encourages the explicit inclusion of this commitment in the rules and disciplines of the AoA.

53. *Accession negotiations.* It is also important that countries currently negotiating accession to the WTO maintain the full special and differential treatment open to developing countries and be able to maintain the flexibility that many WTO agreements allow. Countries involved in accession talks should ensure that such preferences are not negotiated away. Some smaller or poorer countries can be in a vulnerable position in accession negotiations. The general comment of the CESCR notes that States also have a responsibility to respect the right to food in other countries. The High Commissioner reminds States of the general responsibility to respect human rights in other countries and encourages WTO members to negotiate in ways that would enable acceding countries to respect, protect and fulfil the human rights of their own people.

54. *Further substantive work.* The High Commissioner encourages further research to develop human rights approaches to the liberalization of agricultural trade. In particular, the High Commissioner encourages further substantive work on the following areas: a clarification of the human rights principle of non-discrimination as it relates to WTO trade rules, including the principles of national treatment and most-favoured-nation treatment; the development of mechanisms for special and differential treatment that is targeted at vulnerable individuals and groups but not wealthy farmers and agrobusiness; the development of mechanisms for allowing effective and minimally trade-distorting protection of food security crops in food-insecure countries; the drafting of guidelines for the provision of food aid that is responsive to need rather than world food prices; and the development of operational mechanisms for the Marrakesh Decision, including the setting of objectives, time frames, benchmarks and indicators and the identification of responsibility holders and beneficiaries.

Notes

[1] *Report of the United Nations Conference on Trade and Development, on its Tenth Session*, Bangkok, 12-19 February 2000 (TD/390), paras. 129, 133.

[2] Programme of Action for the Least Development Countries adopted by the Third United Nations Conference on Least Developed Countries, Brussels, 14-20 May 2001 (A/CONF.191/11), paras. 57, 62, and 65.

[3] World Food Summit Plan of Action adopted by the World Food Summit, Rome, 13-17 November 1996, commitment 7, objective 7.4 (e), para. 16. Commitment 7 states "We will implement, monitor and follow-up this Plan of Action at all levels in cooperation with the international community". Objective 7.4 (e) invites "the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, to better define the rights related to food in article 11 of the [International Covenant on Economic, Social and Cultural Rights] and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all".

[4] China became a member on 11 December 2001 and Chinese Taipei on 1 January 2002.

[5] Vienna Declaration and Programme of Action of the World Conference on Human Rights (A/CONF.157/23), Part I, para. 1.

[6] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, "Agriculture in the GATT: a historical account", Part I, module 4.

[7] See AoA, art. 4.

[8] Each country specifies binding access commitments in individual country Schedules to the AoA.

[9] There is, however, under article 9 (4) of the AoA, a provision allowing special and differential treatment for developing country WTO members to provide some forms of export subsidies during the implementation period of the Uruguay Round results.

[10] See AoA, art. 9 (2) (a) and (b).

[11] AoA, art. 15.

[12] AoA, arts. 6 and 9 (4).

[13] Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on the Least-Developed and Net Food-Importing Developing Countries. See also AoA, art. 16.

[14] Declaration adopted at the fourth WTO Ministerial Conference, Doha, 9-14 November 2001, para. 13.

[15] UNCTAD, Impact of the reform process in agriculture on LDCs and net-food-importing developing countries and ways to address their concerns in multilateral trade negotiations (TD/B/COM.1/EM.11/2 and Corr.1), background note by the UNCTAD secretariat, July 2000. With regard to the Marrakesh Decision, UNCTAD has described its implementation as "unsatisfactory". This is so principally for three reasons: first, the Decision has no operation mechanism for carrying out the support measures specified in it; second, there has been no attempt within the WTO framework systematically to estimate the impact of the implementation of the AoA on LDCs and net-food-importing developing countries; and third, there have been few country-specific impact studies of the AoA during the WTO's monitoring of the Decision. UNCTAD has also noted that LDCs and net-food-importing developing countries experienced increases in food bills and reductions in food aid between 1995 and 1999 and concluded that the ability of these countries to deal with increased food bills remained bleak (see TD/B/COM.1/EM.11/2, paras. 25 ff).

[16] OECD, *The Uruguay Round Agreement on Agriculture: An Evaluation of its Implementation in OECD Countries*, OECD, Paris, 2001. On market access, the OECD report notes tariff peaks on some agricultural products exceeding 200 per cent. UNCTAD also notes that the tariff reduction approach in the AoA lets countries undertake uneven tariff reductions across products, allowing prohibitively high tariffs to be maintained on "sensitive" products - in particular, tariffs on major export products of developing countries such as sugar, tobacco and cotton are frequently levied at peak rates exceeding 200 per cent (see also TD/B/COM.1/EM.11/2, para. 16).

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] TD/B/COM.1/EM.11/2, paras. 12, 14 and 36.

[21] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, Part II, module 1, "Domestic support measures".

[22] World Food Programme, Examining food aid, speaking notes for the FAO Round Table on Selected Issues, in Particular Food Aid, in the Context of the WTO Negotiations on Agriculture, Geneva, 30 November 2001.

[23] FAO, "Food aid in the context of the WTO negotiations on agriculture", discussion paper prepared by the FAO secretariat for the Geneva Round Table, ibid., p. 5 and table 3.

[24] South Centre, *Market Power in Agricultural Markets: Some Issues for Developing Countries*, Trade-Related Agenda, Development and Equity Working Papers No. 6, 1999, p. 2.

[25] FAO, Mobilizing resources to fight hunger, Committee on World Food Security, twenty-seventh session, Rome, 2001.

[26] Ibid.

[27] OECD, op. cit.

[28] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, Part II, module 10, "Trade and food security: options for developing countries".

[29] D. Ben-David, H. Nordstrom and L.A. Winters, *Trade, Income Disparity and Poverty*, WTO Special Study No. 5, Geneva, 2000.

[30] FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Developing Countries*, vol. II, Country Case Studies, FAO Commodities and Trade Division, Rome, 2000, p. 25. The report also gives the example of Brazil where the agricultural sector has been transformed as a result of the reform process. In the dairy sector, farm sizes are increasing and herds improving with large-scale firms moving in to replace traditional cooperatives. The study notes, however, that the solution is not to shrink from the reform process, but rather to improve safeguards for rural populations and small farmers such as by establishing new credit institutions and reforming contract law to protect small farmers in the face of large agricultural companies.

[31] Ibid.

[32] Ibid., p. 167.

[33] Ibid.

[34] WTO, The Effects of the Reduction Commitments on World Trade in Agriculture, statistical background paper by the secretariat (G/AG/NG/S/11/Add.1), Committee on Agriculture, 24 July 2000, table 6.

[35] Ibid., pp. 22-24. For example, a reduction in export subsidies according to the AoA commitments could raise world market prices and therefore increase import bills. Similarly, the implementation of the AoA in the importing country, for example through lowering tariffs, could also attract greater imports in spite of world food price levels.

[36] Ibid., p. 25. FAO country studies noted that in India, food prices rose faster than other consumer prices after 1991 and offers this as a possible explanation of why poverty rates had failed to decline since 1991, despite faster economic growth. The case study considered that price stability is an important element in protecting the welfare of the poor.

[37] FAO, Food security in the context of the WTO negotiations on agriculture, discussion paper 2 prepared for the Geneva Round Table, op. cit., box 1.

[38] P. Pinstrup-Andersen, Rajul Pandya and Mark W. Rosegrant, *The World Food Situation: Recent Developments, Emerging Issues and Long-Term Prospects*, The International Food Policy Research Institute, 20/20 Vision, Washington, DC, 1997, pp. 14 ff.

[39] FAO has noted that significant progress in promoting economic growth, reducing poverty and enhancing food security cannot be achieved in most cases without developing more fully the potential capacity of the agricultural sector and enhancing its contribution to overall economic development. FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Developing Countries*, vol. II, Country Case Studies, op. cit., p. 5.

[40] Ibid.

[41] The AoA does provide flexibility that could accommodate States' responsibilities to promote and protect human rights (see, for example, articles 6 (2), 6 (4) (a) and (b), 9 (4), 11 and 12 (2)). In relation to market access, the AoA includes the special safeguard provision that allows some countries to take action against import surges. While many developing countries cannot benefit from this safeguard, many of these countries generally apply low tariffs and therefore still have substantial room to raise tariffs in accordance with their AoA commitments (WTO, *Market Access: Unfinished Business - Post Uruguay Round Inventory* (Special Study No. 6), p. 52. In particular, see table III.5 which shows, for example: Bangladesh, simple average bound tariff rate 188.3 with the 1999/2000 applied rate at 25.1, compared with the simple average bound tariff rate for Japan at 25.3 with the 1996 applied rate at 26.3). In relation to domestic support measures, the AoA allows developing countries to continue providing support for certain development measures, including measures to protect low-income and resource-poor farmers (AoA, art. 6). For export subsidies, the Agreement allows special and differential treatment for developing and least developed country members to grant marketing cost subsidies and internal transport subsidies, provided that they are not applied in such as way that would circumvent other export subsidy commitments (AoA, art. 9 (4)). Nonetheless, while there is some flexibility in the AoA that leaves States room to develop policies to promote human rights, there are still areas of tension that need resolution. Even the flexibility outlined above is not available to all countries. For example, while the special safeguard provision offers flexibility to avoid or to remedy the effects of import surges, it is only open to those members that undertook tariffication. Most developing country members bound their tariffs at ceiling rates and did not undertake tariffication, and so these countries do not have access to the provision. Consequently, in the case of import surges, while some countries could take the necessary action to guarantee the right to food, others would not have this option. While some developing countries have high bound ceiling rates that offer them flexibility when setting tariffs in the case of import surges, others have bound rates at zero levels and so enjoy no flexibility at all. In relation to domestic support, developing countries that claimed zero commitments are limited in the level of domestic support they can award in the future, while many developed countries that made extensive claims for the base period now have the legal right to continue doing so (TD/B/COM.1/EM.11/2, op. cit., para. 44).

[42] The principle of non-discrimination is one of the foundations of human rights law and could be said to be a point of departure in discussions on human rights and trade. In trade law, the principle of non-discrimination is included in the principles of national treatment and most-favoured-nation treatment. According to human rights law, States undertake to guarantee that rights will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (see common article 2 of the International Covenants on Human Rights). However, under human rights law, the principle of non-discrimination does not imply equal treatment in every instance. Non-discrimination under human rights law sometimes requires affirmative action to diminish or eliminate the conditions preventing the enjoyment of human rights of part of the population (see Human Rights Committee, General Comment No. 18, 1989, paras. 8 and 10).

[43] FAO, *Multilateral Trade Negotiations on Agriculture - A Resource Manual*, Part II, module 10, op. cit.

[44] TD/B/COM.1/EM.11/2, op. cit., para. 9.

[45] FAO, discussion paper 2 for the Geneva Round Table, op. cit.

[46] TD/B/COM.1/EM.11/2, op. cit., para. 46.

[47] General Assembly resolution S-24/2 of 1 July 2000.

Annex

This annex sets out a basic outline of the AoA rules that concern market access and domestic support, as well as the four elements of the Marrakesh Decision.

Market access

The three market access elements include the binding of tariffs, minimum market access opportunities, as well as a special safeguard provision in the case of food import surges.

(a) *Tariff binding.* As part of the process of capping tariff levels - **tariff binding** - the AoA required members to convert agriculture-specific non-tariff measures into tariffs. This process - known as **tariffication** - resulted in a total tariff figure that was then capped - or bound - on the basis of 1986-1988 levels.[a] This generally resulted in a higher - sometimes significantly higher - level of tariffs. However, each State then committed to reduce this total figure. Instead of tariffication, developing countries had the option of binding tariffs at levels higher than the rate actually used. These States then committed themselves to maintaining tariffs at or below this figure.[b]

(b) *Minimum market access.* The fear that the tariffication process would temporarily raise tariffs and obstruct market access led to the introduction of minimum quotas, whereby members agreed to maintain current opportunities to import agricultural goods - according to the 1986-1988 import levels - and, where necessary, offer additional market access opportunities. This means lower tariffs within the quotas and higher rates for quantities outside the quotas.

(c) *Special safeguard provision.* The provision allows members to guard against international price fluctuations allowing the application of additional tariffs in the case of import surges.[c] A price surge or a volume surge will trigger the provision. This provision is the third element of the tariffication package and can only be invoked with respect to "tariffied" products - in other words, only those members that undertook the tariffication process are able to benefit from the provision.

Domestic support

The AoA includes areas where domestic support need not be reduced - green box, blue box, development measures and the *de minimis* level of support. The amber box is subject to reduction commitments.

(a) *Green box measures.* The green box includes measures deemed to have minimal or no impact on trade and are divided into two main groups: direct payments to producers that are not linked to production decisions, and government service programmes. Such measures include, for example, Government-funded agricultural research, pest and disease control programmes, agricultural training and advisory services, domestic food aid, disaster relief and so on.[d] The outlays for green box measures can be increased by members without limitation.

(b) *Blue box measures*. The blue box includes certain domestic support in the form of direct payments to producers under production-limiting programmes relevant mainly for certain European countries.

(c) *Development measures*. The AoA also does not require reductions in certain development measures of developing countries designed to encourage agricultural and rural development and that are an integral part of development programmes.[e] Measures in this category include investment subsidies generally available to low-income or resource-poor producers, input subsidies generally available to low-income or resource-poor farmers, and investment support to producers in developing countries to encourage diversification from growing illicit narcotic crops.

(d) *De minimis level of support*. The *de minimis* level of support sets a minimum level of permissible trade-distorting domestic support. There are two minimum levels below which such domestic support is permissible: one is product specific, the other is not specific to any product in particular. First, the *de minimis* level includes any domestic support for a particular product if that support is not greater than 5 per cent of the total value of production of the particular agricultural product. Second, the *de minimis* level includes all non-product-specific support that is less than 5 per cent of the value of total agricultural production - in other words, over all products. Thus, the AoA allows trade-distorting domestic support in these two areas, up to this level. For developing countries, the *de minimis* ceiling is 10 per cent in both cases.

(e) *Amber box*. All other domestic support falls within the "amber" box which means it has to be reduced. The sum of expenditures on non-exempted domestic support is known as the total aggregate measure of support (AMS). Under the Agreement, members had to calculate and notify their base (1986-1988) total AMS, which was then capped. Members agreed to reduce domestic support from these levels.

Special and differential treatment

The Marrakesh Decision includes four elements as follows:

(a) *Food aid*. The Decision expresses concern that the implementation of the AoA might adversely affect the availability of food aid in sufficient amounts.[f] It addresses three issues. First, ministers agreed to review the level of food aid established by the Committee on Food Aid under the Food Aid Convention. Next, ministers agreed to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries. Finally, ministers agreed to adopt guidelines on the provision of food aid.

(b) *Agricultural export credits*. Ministers agreed that any agreement on export credits, as mandated under article 10 of the AoA, should ensure differential treatment for least developed and net-food-importing countries.

(c) *Financing facilities.* Ministers reiterated that least developed and net-food-importing countries may draw on financial facilities, "or such facilities as may be established" to finance normal levels of commercial imports. The IMF, for example, has a Compensatory and Contingency Financing Facility.

(d) *Technical and Financial Assistance under Aid Programmes.* Ministers also agreed to give full consideration to requests from least developed and net-food-importing countries to provide technical and financial assistance to improve their agricultural productivity and infrastructure in the context of their aid programmes.

Notes

[a] For developed country members, tariffication applied to not more than 20 per cent of all agricultural tariff lines although this included many "sensitive" products. For developed country members, this percentage is even smaller.

[b] An FAO study demonstrates that many developing countries have ceiling rates considerably higher than their applied tariff rates. There were several reasons for this, however; importantly, it gives those countries some flexibility to set higher tariffs where necessary for food security or development reasons. There are nonetheless some other cases, such as India, which has bound levels for tariffs at 0 for certain sensitive products - in the context of food security - such as rice. See FAO, *Agriculture, Trade and Food Security Issues and Options in the WTO Negotiations from the Perspective of Development Countries*, vol. II, Country Case Studies, FAO Commodities and Trade Division, Rome, 2000, pp. 6 ff.

[c] AoA, art. 5.

[d] See AoA, annex 2, for a full list of green box measures.

[e] AoA, art. 6.

[f] Marrakesh Decision, para. 3.